FILED
OCT 5 - 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-176

IN THE

Supreme Court of the United States

CNH AMERICA LLC,
Petitioner,

v.

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, GARY HALSTED AND EL PASO TENNESSEE PIPELINE COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROGER J. MCCLOW *
KLIMIST, MCKNIGHT, SALE, MCCLOW & CANZANO, P.C.
400 Galleria Officentre, Suite 117
Southfield, MI 48034
(248) 354-9650

* Counsel of Record

Counsel for Respondents Yolton, Montgomery, Teas, Betker, Maynard and Halsted

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTIONS PRESENTED

I. Whether this Court should decline to review the interlocutory decision of the Sixth Circuit which involves the application of traditional principles of contract interpretation in a Section 301 breach of contract action.

II. Whether this Court should decline to review the interlocutory decision when there is no disagreement among the Circuits as to the basic principles of contract interpretation applicable to a Section 301 breach of contract action for retiree health care benefits.

III. Whether this Court should decline to review the interlocutory decision when there is no disagreement among the Circuits as to the legal standards to be applied in determining the circumstances under which business entities are bound to collective bargaining agreements.

PARTIES TO THE BRIEF

This Brief in Opposition is filed by Respondents Gladys Yolton, Wilbur Montgomery, Elsie Teas, Robert Betker, Edward Maynard, Gary Halsted. In this Brief, these Respondents are referred to as the Plaintiffs.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE BRIEF	ii
TABLE OF AUTHORITIES	v
STATEMENT OF THE CASE	1
A. The Collective Bargaining Agreements	1
B. Case Corporation—The Reorganization	3
C. The Dispute	5
D. The District Court's Preliminary Injunction	5
E. The Sixth Circuit's Decision on Interlocutory Appeal	6
REASONS FOR DENYING THE WRIT	6
A. This Petition Involves an Interlocutory Appeal	7
B. The Sixth Circuit's Preliminary Decision Regarding Vesting Does Not Conflict with Other Circuits	8
1. The Sixth Circuit's Analysis of the Labor Agreement	10
a. The Sixth Circuit Applied Traditional Rules of Contract Interpretation to the Unique Facts of This Case	10
b. The Sixth Circuit Did Not Rely on the *Yard-Man* Inference	12
2. There is No Split Among the Circuits	13
a. The Circuits Agree on the Rules of Contract Interpretation to be Applied	13

TABLE OF CONTENTS—Continued

Page

b. No Circuit Disagrees with the Sixth Circuit's Consideration of the Explicit Contractual Link of Health Care and Pension Eligibility 20

3. The Sixth Circuit's Preliminary Decision Does Not Conflict With Any Federal Policy 21

C. The Interlocutory Decision of the Sixth Circuit Does Not Implicate a Conflict as to CNH's Liability 23

1. The Cases Cited by CNH Involve Different Legal Standards Applicable in Entirely Distinct Factual Contexts..... 23

2. Cases Applying Corporate Law Alter Ego Standard 25

3. Cases Applying the Workforce-Related NLRB-Derived Alter Ego Standard 27

CONCLUSION 29

TABLE OF AUTHORITIES

CASES Page

American Construction Co. v. Jacksonville T. & K.R. Co., 148 U.S. 372 (1893) 7
Anderson v. Alpha Portland Industries, Inc., 836 F.2d 1512 (8th Cir. 1988), *cert denied sub nom Anderson v. Slattery Group, Inc.*, 489 U.S. 1051 (1989) 15, 18
Ashcroft v. American Civil Liberties Union, 542 U.S. 656 (2004) 8
Bazzone v. Automotive Industry Welfare Fund, 860 F.2d 1088, 1988 WL 58340 (9th Cir. 1988) (unpublished opinion) 19
Bittinger v. Tecumseh Products Co., 83 F. Supp.2d 851 (E.D. Mich. 1998), *aff'd* 201 F.3d 440 (6th Cir. 1999) (unpublished opinion) 16
Bidlack v. Wheelabrator Corp., 993 F.2d 603 (7th Cir.), *cert. denied*, 510 U.S. 909 (1993) 9, 15, 16, 20
Braxton v. United States, 500 U.S. 344 (1991) 8
Central States Pension Fund v. Central Transport, Inc., 85 F.3d 1282 (7th Cir. 1996) 27
Cherry v. Auburn Gear, Inc., 441 F.3d 476 (7th Cir. 2006) 15, 20
Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) 8
Crest Tankers, Inc., v. National Maritime Union, 796 F.2d 234 (8th Cir. 1986) 28
Dewitt Truck Brokers, Inc. v W. Ray Fleming Fruit Co., 540 F.2d 681 (4th Cir. 1976) 25
Frisby v. Schultz, 487 U.S. 474 (1988) 8
Gable v. Sweetheart Cup Co., 35 F.3d 851 (4th Cir. 1994), *cert. denied*, 514 U.S. 1057 (1995) ... 9, 15
Golden v. Kelsey-Hayes Co., 845 F. Supp. 410 (E.D. Mich. 1994), *aff'd* 73 F.3d 648 (6th Cir.), *cert. denied*, 519 U.S. 807 (1996) 9, 11, 20

TABLE OF AUTHORITIES—Continued

	Page
Grain Millers v. International Multifoods Corp., 116 F.3d 976 (2d Cir. 1997)	15
Hamilton-Brown Shoe Co. v. Wolf Brothers & Co., 240 U.S. 251 (1916)	7
Helwig v. Kelsey-Hayes Co., 93 F.3d 243 (6th Cir. 1996), *cert. denied*, 519 U.S. 1059 (1997).	9, 15
Howard Johnson Co. v. Detroit Hotel & Restaurant Workers, 417 U.S. 249 (1974)	23, 25
In re Unisys Corp. Retiree Medical Ben. ERISA Litigation, 58 F.3d 896 (3d Cir. 1995), *cert. denied sub nom Pickering v. Unisys Corp.*, 517 U.S. 1103 (1996)	15
J. Vallery Electric, Inc. v. N.L.R.B., 337 F.3d 446 (5th Cir. 2003)	27
Jensen v. Sipco, Inc., 38 F.3d 945 (8th Cir. 1994), *cert. denied*, 514 U.S. 1050 (1995)	9
John Morrell & Co. v. Food & Commercial Workers, 37 F.3d 1302 (8th Cir. 1994), *cert. denied*, 515 U.S. 1105 (1995)	9
Joyce v. Curtiss-Wright Corp., 992 F. Supp. 259 (W.D.N.Y 1997), *aff'd* 171 F.3d 130 (2d Cir. 1999)	18, 21
Kansas City Laborers Pension Fund v. Superior General Contractors, Inc., 104 F.3d 1050 (8th Cir. 1997)	26
Keffer v. H.K. Porter Co., Inc., 872 F.2d 60 (4th Cir. 1989)	7
LaForest v. Former Clean Air Holding Co., Inc., 376 F.3d 48 (2d Cir. 2004)	7
Local 150-A, Food & Commercial Workers v. Dubuque Packing Co., 756 F.2d 66 (8th Cir. 1985)	20

TABLE OF AUTHORITIES—Continued

	Page
Local 343, Plumbers v. Nor-Cal Plumbing, Inc., 48 F.3d 1465 (9th Cir. 1994), *cert. denied*, 516 U.S. 912 (1995)	28
Machinists v. Masonite Corp., 122 F.3d 228 (5th Cir. 1997)	15, 18
Mauer v. Joy Technologies, Inc., 212 F.3d 907 (6th Cir. 2000)	14, 17, 19
Mazurek v. Armstrong, 520 U.S. 968 (1997)	7
McCoy v. Meridian Automotive Systems, Inc., 390 F.3d 417 (6th Cir. 2004)	17, 19
Merk v. Jewel Companies, Inc., 848 F.2d 761 (7th Cir.), *cert. denied*, 488 U.S. 956 (1988)	9
Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241(1974)	8
N.L.R.B. v. Allcoast Transfer, Inc., 780 F.2d 576 (6th Cir. 1986)	23, 25
N.L.R.B. v. Burns International Security Services, Inc., 406 U.S. 272 (1972)	24
N.L.R.B. v. Fullerton Transfer & Storage Limited, Inc., 910 F.2d 331 (6th Cir. 1990)	24
N.L.R.B. v. Greater Kansas City Roofing, Inc., 2 F.3d 1047 (10th Cir. 1993)	25
Paperworkers v. Champion International Corp., 908 F.2d 1252 (5th Cir. 1990)	20
Puzis v. Masters Mates & Pilots Plans, 875 F.2d 870, 1989 WL 57657 (9th Cir. 1989) (unpublished opinion)	21
Rossetto v Pabst Brewing Co., 217 F.3d 539 (7th Cir. 2000), *cert. denied*, 531 U.S. 1192 (2001)	22
Saenz v. Roe, 526 U.S. 489 (1999)	8
Sengpiel v. B.F. Goodrich Co., 156 F.3d 660 (6th Cir. 1998), *cert. denied*, 526 U.S. 1016 (1999)	9

TABLE OF AUTHORITIES—Continued

Page

Senior v. NSTAR Electric & Gas Corp., 449 F.3d 206 (1st Cir. 2006) 15, 17, 22
Sprague v. General Motors Corp., 133 F.3d 388 (6th Cir.), *cert. denied*, 524 U.S. 923 (1998) 9, 15
Steelworkers v. Connors Steel Co., 855 F.2d 1499 (11th Cir. 1988), *cert. denied sub nom H.K. Porter Co., Inc. v. Steelworkers*, 489 U.S. 1096 (1989) 7, 26
Steelworkers v. Textron, Inc., 836 F.2d 6 (1st Cir. 1987) 7
Stewart v. KHD Deutz of America Corp., 980 F.2d 698 (11th Cir. 1993) 19
UAW v. BVR Liquidating, Inc., 190 F.3d 768 (6th Cir. 1999), *cert. denied*, 529 U.S. 1067 (2000) .. 9, 15, 17
UAW v. Skinner Engine Co., 188 F.3d 130 (3d Cir. 1999) 15, 16, 19
UAW v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984) ..... *passim*
Virginia Military Institute v. United States, 508 U.S. 946 (1993) 7

STATUTES

29 U.S.C. § 1381 27

OTHER AUTHORITIES

Ossi, *It Doesn't Add Up: The Broken Promises of Lifetime Health Benefits, Medicare and Accounting Rule FAS 106 Do Not Equal Satisfactory Medical Coverage for Retirees*, 13 J. of Contemp. Health L. & Policy 233 (1996) ... 3

IN THE

Supreme Court of the United States

No. 06-176

CNH AMERICA LLC,
Petitioner,

v.

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, GARY HALSTED AND EL PASO TENNESSEE PIPELINE COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

A. The Collective Bargaining Agreements

Case[1] (now CNH) and the UAW were parties to a series of collective bargaining agreements (CBAs) which included Group Insurance Plans (GIPs) addressing benefits for various categories of employees as well as retirees and their surviving spouses. Pet. App. 4a.

[1] Case was known as J.I. Case Company prior to 1990 when it changed its name to Case Corporation. Pet. App. 45a. In 2004, Case changed its name to CNH America LLC. Pet. App. 91a.

In 1971, Case agreed to pay the entire cost of health care benefits for retirees and surviving spouses over age 65 beginning January 1, 1972. Pet. App. 47a. The GIPs contained a section entitled: "Provisions Applicable to Employees Retired on Company Pension and Surviving Spouses Receiving Company Pension." That section provided that Case "shall pay the full premium cost of [health care] coverages" for "Employees who retire under the J I Case Pension Plan for Hourly Paid Employees, or their surviving spouses eligible to receive a spouse's pension under the provisions of that Plan . . . ." Pet. App. 47a.

In a December 30, 1971 letter, Case's Benefits Manager explained these benefits to retirees: "Retirees and Surviving Spouses, age 65 or older, are not required to pay a premium, either for themselves or any dependent. Instead, the coverage shall be fully paid by the Company." In response to the question: "Will my spouse be able to keep this coverage if I pass away?" he answered: "*If you have elected the Spouse's Optional Form of Pension and your spouse will receive a pension as a result, your spouse will be able to keep this coverage for the remainder of her lifetime. . . .*" (emphasis added). Pet. App. 64a.

In the 1974 negotiations, Case extended fully paid coverage to retirees and surviving spouses regardless of age. The language of the GIPs relating to retiree health care benefits remained substantially unchanged from 1974 to 1990. Pet. App. 47a.

In 1987, Case and the UAW negotiated a Plant Shutdown Agreement for the Rock Island, Bettendorf and Terre Haute plants. The Shutdown Agreement provided enhanced retirement options which included retiree health care benefits. The Shutdown Agreement described "hospitalization/medical insurance" (as well as retiree life insurance and pensions) as "vested residual rights." Pet. App. 48a.

The CBA, at Article XVI, Section 4 contained the following two provisions:

> 4A. The insurance plan agreed to between the parties will run concurrently with this Agreement and is hereby made part of this Agreement.
>
> . . .
>
> 4C. The pension plan agreed to between the parties will run concurrently with this Agreement and is hereby made part of this Agreement. Pet. App. 4a.

Case's benefit representatives at the various plants consistently informed retirees verbally and in writing that they would have unchanged, fully paid health care benefits for their lifetimes and that their surviving spouses would also have lifetime health care benefits. Pet. App. 63a-66a.

On November 5, 1993, Case Corporation and the UAW initialed an Extension Agreement to extend the 1990 CBA through February 5, 1995. Pet. App. 49a. Section 9 of the Extension Agreement, entitled "FAS 106 Out-Year Cost Limiters,"[2] refers to a "Letter of Agreement" that the cost to the company of providing benefits to retirees after April 1, 1998 would not exceed a specified dollar amount. Pet. App. 50a.

B. Case Corporation—The Reorganization

In 1994, Case Corporation was a wholly owned subsidiary of Tenneco Corporation. Pet. App. 45a. In early 1994, Tenneco's Board of Director's decided to "reorganize" to facili-

---

[2] FAS 106 is an accounting standard promulgated by the Financial Accounting Standards Board requiring companies to report post-retirement health care obligations on their financial statements on an accrual basis. Companies used various methods to reduce the FAS 106 figure. *See* Ossi, *It Doesn't Add Up: The Broken Promises of Lifetime Health Benefits, Medicare and Accounting Rule FAS 106 Do Not Equal Satisfactory Medical Coverage for Retirees*, 13 J. of Contemp. Health L. & Policy 233 (1996).

tate a public offering of its "equity interests in Tenneco's farm and construction equipment business . . ." (defined as the "Case Business"). Pet. App. 82a. The Reorganization Agreement was between Tenneco, Case Corporation and a new corporation (Case Equipment Corporation) that Tenneco incorporated for that purpose. Pet. App. 3a, 51a. Tenneco assigned all of the Case Business to Case Equipment except for Tenneco's ownership of Case stock, certain demand notes and subordinated debt and certain Retained Assets and the Retained Liabilities. Pet. App. 3a. In the Employee Benefit and Compensation Allocation Agreement, ("Allocation Agreement"), Tenneco assumed Case's postretirement health and life insurance obligations (the "Retained Liabilities") for pre-reorganization retirees. Case Equipment "assumed" the existing CBAs including the 1990 CBA under which many Plaintiffs retired. Pet. App. 5a-6a, 84a.

The President and CEO of Case Corporation signed the Reorganization Agreement for Case Equipment Corporation as Case Equipment's President and CEO. Case Corporation's Senior VP, CFO and Treasurer signed the Reorganization Agreement and the Allocation Agreement for Case Corporation. He also signed the Allocation Agreement for Case Equipment as its Senior VP, CFO and Treasurer. Pet. App. 29a.

Prior to the reorganization, Case's President and CEO sent a letter to retirees announcing that Case and Tenneco had "announced an action which, when completed, *will make Case* a publicly traded company." Pet. App. 83a. (emphasis in district court opinion).

At 12:01 a.m. on July 1, 1994, Case Corporation changed its name to Tenneco Equipment Corporation. One minute later, Case Equipment Corporation changed its name to Case Corporation. Both certificates of amendment were signed by the same person. Pet. App. 83a. The pre-reorganization officers of Case Corporation remained officers of post-reorganization Case Corporation. Pet. App. 83a. Case Cor-

poration continued to operate under the same management, at the same locations, with the same equipment, with the same supervision, producing the same products, with the same employees, working under the existing CBAs. Pet. App. 30a, 84a. Case Corporation continued to correspond, as it had for years, using the same "J. I. Case" letterhead, signed by the same representatives at the same locations in the same positions performing the same functions. Pet. App. 30a, 84a.[3]

C. The Dispute

In 1996, Tenneco merged with El Paso. In October 1997, El Paso notified retirees that they had to pay $56 a month for their health care coverage beginning April 1, 1998. Pet. App. 7a. In November 1997, Case Corporation notified retirees and surviving spouses that it would pay the contribution through the end of 1998. Pet. App. 54a-55a. During the 1998 negotiations with the UAW, Case Corporation agreed to fund a VEBA trust to pay health care contributions for pre-reorganization retirees. Pet. App. 54a. In August 2002, when VEBA funds were exhausted, El Paso informed retirees that they would have to pay $290 per month for their health care benefits. Pet. App. 55a. In October 2002, Plaintiffs sued Case and El Paso. Pet. App. 55a.

In September 2002, Case Corporation changed its name to Case, LLC. Pet. App. 47a. In January 2004, Case, LLC changed its name to CNH America LLC. Pet. App. 91a.

D. The District Court's Preliminary Injunction

On December 31, 2003, the district court granted Plaintiffs' motion for preliminary injunction. It concluded that, based on the express language of the GIP, retirees were entitled to lifetime health care benefits. Pet. App. 58a-63a. The court

---

[3] CNH claims that, after the Reorganization, "Tenneco . . . continued to administer and pay respondents' health care benefits." Pet. 7. To the contrary, as the court found, "Tenneco then *began* paying the full cost of the plaintiff's health care benefits in 1994." (emphasis added). Pet. App. 7a.

then found that "[e]ven if the parties' intent were not clear based on the express language of the various labor agreements," there was substantial extrinsic evidence confirming Case's intent to provide fully paid lifetime health care benefits. Pet. App. 63a. The court further concluded that El Paso, as Tenneco's successor, had assumed Case's obligation to provide the benefits. Pet. App. 74a-75a.

On March 9, 2004, the court granted El Paso's motion for reconsideration, concluding that it had "overlook[ed] the fact that, as the signatory to the CBAs, Case LLC retained liability for Plaintiffs' health care costs despite El Paso's subsequent assumption of those liabilities . . . ." Pet. App. 80a. On September 3, 2004, the district court granted summary judgment for CNH on its indemnity cross-claim against El Paso. Pet. App. 31a.

E. The Sixth Circuit's Decision on Interlocutory Appeal

On January 17, 2006, the Sixth Circuit affirmed, concluding that the district court had not abused its discretion in issuing the preliminary injunction. The Sixth Circuit also affirmed the March 9, 2004 decision that Case was directly liable to the retirees and the September 3, 2004 decision granting summary judgment for Case on its indemnification cross claim.

REASONS FOR DENYING THE WRIT

Nothing about this interlocutory decision is worthy of review by this Court. The Sixth Circuit simply determined the district court did not abuse its discretion in making a preliminary determination, based on those facts then available, that Plaintiffs were likely to ultimately prevail.

The district court engaged in a preliminary, garden-variety exercise in contract interpretation. This dispute will ultimately require examination of CBAs going back three decades and the facts surrounding the negotiation and admini-

stration of those CBAs before there can be a final determination of the intent of the parties. Because CNH claimed below that it did not sign the CBAs, the ultimate resolution of this case will also require a detailed factual inquiry into Case's corporate history, Tenneco's 1994 reorganization and the operations of the entities involved.

These issues still to be decided, by definition, present fact-specific questions. The final outcome is not foreordained by the preliminary rulings of the courts below. Moreover, there is no conflict in the Circuits. The petition should be denied.

A. This Petition Involves an Interlocutory Appeal

This Court has long disfavored the grant of *certiorari* with respect to interlocutory decisions. *American Construction Co. v. Jacksonville T. & K.R. Co.*, 148 U.S. 372, 384 (1893); *Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916) (*certiorari* should be granted as to interlocutory decisions only in "extraordinary" cases).

There is nothing extraordinary about this case. The district court issued a preliminary injunction requiring the continuation of health care coverage while the action below continues, as courts have often done. *See e.g. Steelworkers v. Textron, Inc.*, 836 F.2d 6 (1st Cir. 1987); *LaForest v. Former Clean Air Holding Co., Inc.*, 376 F.3d 48 (2d Cir. 2004); *Keffer v. H.K. Porter Co., Inc.*, 872 F.2d 60, 61 (4th Cir. 1989); *Steelworkers v. Connors Steel Co.*, 855 F.2d 1499, 1500 (11th Cir. 1988), *cert. denied sub nom H.K. Porter Co., Inc. v. Steelworkers*, 489 U.S. 1096 (1989). After a final decision is rendered, either party can then petition for a review of all issues that turn out to be, in fact, dispositive. *See Virginia Military Institute v. United States*, 508 U.S. 946 (1993).

The cases CNH cites to support *certiorari* only serve to emphasize that *certiorari* is confined to the most extraordinary interlocutory cases, most often involving constitutional issues. *Mazurek v. Armstrong*, 520 U.S. 968 (1997)

(summary reversal when Ninth Circuit ignored clear Supreme Court abortion law precedent); *Frisby v. Schultz*, 487 U.S. 474 (1988)(First Amendment challenge to ordinance barring residential picketing where further proceedings would not aid Court); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975)(review of state rape victim shield law where state court decision on First Amendment issue was final); *Miami Herald Publishing Co. v. Tornillo* 418 U.S. 241, 246 n. 6 (1974)(challenge to state law requiring political editorial rebuttals: "it would be intolerable to leave unanswered, under these circumstances, an important question of freedom of the press under the First Amendment"); *Ashcroft v. American Civil Liberties Union,* 542 U.S. 656 (2004)(First Amendment challenge to federal statute criminalizing internet postings harmful to minors); and *Saenz v. Roe*, 526 U.S. 489 (1999) (Equal Protection challenge to state law denying welfare benefits to newly arrived residents).

This is an interlocutory decision in a routine contract interpretation case. CNH has prevailed on its indemnification cross claim against El Paso and has no immediate financial exposure. CNH has shown no reason to invoke this Court's *certiorari* jurisdiction ("granted only when there are compelling reasons" in *any* case[4]) prior to a final decision in *this* case.

B. The Sixth Circuit's Preliminary Decision Regarding Vesting Does Not Conflict with Other Circuits

By definition, cases presenting issues of contract interpretation are fact specific. As the decisions below show, contract interpretation is an exercise in details. The tools for approaching that task are nothing more controversial than hornbook principles of contract construction. No overarching theory dictates the result in these cases. None could. Instead, each case is *sui generis* and must be examined based on its

---

[4] *Braxton v. United States*, 500 U.S. 344, 347 (1991)

own particular language, typically in a series of related CBAs spanning decades. In light of this, it is not surprising that this Court has declined invitations to review retiree contractual health care disputes—at least eleven times.[5] CNH's dissatisfaction with the preliminary contractual interpretation below is no basis for review by this Court.

CNH asserts that there is a conflict among the Circuits with respect to one aspect of a Sixth Circuit decision, *UAW v Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir, 1973), *cert. denied*, 465 U.S. 1007 (1984), the so-called *Yard-Man* inference. As shown below: 1) the Sixth Circuit has never applied an outcome-determinative rule of contract construction in favor of retirees; and 2) there is no disagreement between the Circuits on the nature of the task to be performed when confronted with disputes about the duration of collectively bargained promises of post-retirement benefits; and 3) neither the district court nor the Sixth Circuit relied on any inference here. Rather, like each of the Circuits, the Sixth Circuit has always utilized traditional tools of contract interpretation to examine the details of contractual language and history to reach an informed decision on the parties' intent.

---

[5] *See Gable v. Sweetheart Cup Co.*, 35 F.3d 851 (4th Cir. 1994), *cert. denied*, 514 U.S. 1057 (1995); *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648 (6th Cir. 1996), *cert. denied*, 519 U.S. 807 (1996); *Helwig v. Kelsey-Hayes Co.*, 93 F.3d 243 (6th Cir. 1996), *cert. denied*, 519 U.S. 1059 (1997); *Sengpiel v. B.F. Goodrich Co.*, 156 F.3d 660 (6th Cir. 1998), *cert. denied*, 526 U.S. 1016 (1999); *Sprague v. General Motors Corp.*, 133 F.3d 388 (6th Cir. 1998), *cert. denied*, 524 U.S. 923 (1998); *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir.), *cert. denied*, 510 U.S. 909 (1993); *Merk v. Jewel Companies, Inc.*, 848 F.2d 761 (7th Cir. 1988), *cert. denied*, 488 U.S. 956 (1988); *Jensen v. Sipco, Inc.*,38 F.3d 945 (8th Cir. 1994), *cert. denied*, 514 U.S. 1050 (1995); *John Morrell & Co. v. Food & Commercial Workers*, 37 F.3d 1302 (8th Cir. 1994), *cert. denied*, 515 U.S. 1105 (1995); *UAW v. BVR Liquidating, Inc.*, 190 F.3d 768 (6th Cir. 1999), *cert. denied*, 529 U.S. 1067 (2000).

1. The Sixth Circuit's Analysis of the Labor Agreement

a. *The Sixth Circuit Applied Traditional Rules of Contract Interpretation to the Unique Facts of This Case*

As the Sixth Circuit noted, the district court quoted the traditional rules of contract interpretation enunciated in *Yard-Man*, 716 F.2d at 1479-80. Pet. App. 11a, 57a.

> The court should first look to the explicit language of the collective bargaining agreement for clear manifestations of intent . . . The court should also interpret each provision in question as part of the integrated whole. If possible, each provision should be construed consistently with the entire document and the relative positions and purposes of the parties. As in all contracts, the collective bargaining agreement's terms must be construed so as to render none nugatory and avoid illusory promises. Where ambiguities exist, the court may look to other words and phrases in the collective bargaining agreement for guidance. Variations in language used in other durational provisions of the agreement may, for example, provide inferences of intent useful in clarifying a provision whose intended duration is ambiguous. Finally, the court should review the interpretation from its examination of the language, context and other indicia of intent for consistency with federal labor policy.

These rules are echoed in numerous decisions across the Circuits. They are uncontroversial hornbook propositions. As the Sixth Circuit explained: "All that *Yard-Man* and subsequent cases instruct is that the court should apply ordinary principles of contract construction." Pet. App. 14a. The Sixth Circuit applied these "ordinary principles" to the unique facts of this case and concluded that the district court did not abuse its discretion in making a preliminary finding that Plaintiffs were likely to prevail.

In its analysis, the district court initially noted that the GIPs provided that CNH would pay the full cost of health care coverage for retirees and surviving spouses who were eligible for or receiving pensions. Pet. App. 14a, 59a. It concluded that this language was similar to the language in *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648 (6th Cir. 1996), *cert. denied*, 519 U.S. 807 (1996). Pet. App. 59a. As the Sixth Circuit explained, Pet. App. 14a:

> This language is similar to *Golden*, where the district court's key finding was the provisions in each of the CBAs that tied retiree benefits and surviving spouse eligibility for health insurance coverage to eligibility for vested pension benefits. "Since retirees are eligible to receive pension benefits for life, the court found that the parties intended that the company provide lifetime health benefits as well." *Golden*, 73 F.3d at 656.

The Sixth Circuit disagreed with CNH that a general clause which provides that the insurance plan "will run concurrently" with the CBA limits retiree insurance benefits to the term of the CBA. It noted that the CBA contained identical "concurrent" language in reference to the pension plan. Because pension benefits last throughout retirement, the Sixth Circuit found that the same language referencing the insurance plan could be read to mean the same thing. Pet. App. 15a.

Finally, the district court and Sixth Circuit identified specific durational limits for other benefits in the CBAs, concluding that "the inclusion of specific durational limitations in other provisions suggests . . . that retiree benefits, not so specifically limited, were intended to survive . . ." Pet. App. 17a. (*quoting Yard-Man*, 716 F.2d at 1481-82).

The Sixth Circuit reviewed Case's conduct over several decades, concluding that it was consistent with the "plain language" of the CBAs. Pet. App. 19a. The court noted the following conduct in particular: statements from Case benefit employees to retirees "that their medical insurance benefits

would continue unchanged for their lifetime . . ."; the 1971 letter from Case's Director of Benefits stating that the "Company would fully cover benefits and that benefits would be in effect for life"; documents related to plant shutdown retirement agreements reflecting that health insurance benefits "continu[ed] unchanged" "[f]or lifetime"; medical insurance cards issued to retirees which stated "Lifetime" or "Lifetime Coverage"; retirement materials that stated that if a retiree died, spousal benefits "would continue as before"; and numerous affidavits from retirees, some containing "accompanying documentation promising fully funded health insurance for life." Pet. App. 20a.

CNH relied heavily on the factual background that is unique to this case. In addition to the "concurrent language," for example, it cited language from summary plan descriptions and the FAS 106 letter which, it claimed, indicated that retiree benefits were either not vested or "capped." Pet. App. 16a-21a.

The district court, after considering and weighing all the evidence and the arguments of the parties, concluded that the retirees were likely to prevail on the merits. The Sixth Circuit affirmed, but noted: "As the injunction issued by the district court is a preliminary injunction, the defendants may continue to press their arguments below . . . ." Pet. App. 21a.

b. *The Sixth Circuit Did Not Rely on the* Yard-Man *Inference*

CNH's petition is premised on its claim that the Circuits disagree as to an "inference" articulated twenty-three years ago in *Yard-Man*, 716 F.2d at 1482. But, neither the district court nor the Sixth Circuit relied on the *Yard-Man* inference. The Sixth Circuit noted that, while the district court mentioned the inference:

> [T]he court's analysis does not in any sense *rely* on an inference. . . . Instead, the district court interpreted the

> language of the agreement and found evidence that the defendants intended to confer lifetime benefits upon the plaintiffs.

Pet. App. 14a. (emphasis in original).

In order to salvage an argument that has no basis in the decisions below, CNH makes the extraordinary claim that the Sixth Circuit nevertheless relied on the *Yard-Man* inference "*sub rosa*." Pet. 16.[6] To the contrary, both the district court and the Sixth Circuit relied on the plain language of the CBAs buttressed by overwhelming extrinsic evidence of intent.

2. There is No Split Among the Circuits

a. *The Circuits Agree on the Rules of Contract Interpretation to be Applied*

There is no split among the Circuits as to the law to be applied in resolving contractual disputes over retiree health care benefits. The *Yard-Man* inference—if it becomes a factor—is simply an observation that, because retirees have no bargaining rights after they retire, it is unlikely, absent other factors, that retiree health care benefits, "which are typically understood as a form of delayed compensation . . . would be left to the contingencies of future negotiations." *Yard-Man*, 716 F.2d at 1482.

---

[6] To prop up this argument, CNH claims, for example, that the Sixth Circuit "fram[ed]" the CBA as ambiguous. *Id.* It did not. It stated that "the plain language of the CBAs requires us to conclude that the district court did not abuse its discretion . . ." but nevertheless reviewed extrinsic evidence to confirm its conclusion. Pet. App. 19a. CNH also asserts that the Sixth Circuit relied on silence in the CBAs regarding the duration of retiree health care benefits. Pet. 17. To the contrary, the Sixth Circuit found that the tying of retiree health care to pension eligibility *was* an expression of intent as to the duration. Pet. App. 14a.

The Sixth Circuit below—echoing prior Sixth Circuit decisions—noted the extremely limited effect of this factor:

> El Paso and CNH America misinterpret the term "inference" and confuse it with a legal presumption. Under *Yard-Man* we may *infer* an intent to vest from the context and already sufficient evidence of such intent. Absent such other evidence, we do not start our analysis presuming anything. . . . "[t]here is no legal presumption that benefits vest and that the burden of proof rests on plaintiffs." *Maurer*, 212 F.3d at 917. This Court has never inferred an intent to vest in the absence of either explicit contractual language or extrinsic evidence indicating such an intent. Rather, the inference functions more to provide a contextual understanding about the nature of labor-management negotiations over retiree benefits.

Pet. App. 13a. (emphasis in original).

Contrary to CNH's arguments, the *Yard-Man* inference does not create an outcome-determinative rule favoring the vesting of retiree medical benefits. It simply allows courts faced with "vague or ambiguous" CBAs to consider the context in which those agreements arise. It merely assures that all relevant evidence of intent will be considered.

There is no case in the Sixth Circuit or elsewhere where the application of the inference *vel non* was dispositive. Instead, the outcome of these cases depends on a detailed examination of the contract language and, if necessary, on other evidence bearing on the intent of the contracting parties. No overarching rule of contract construction resolves these fact-dependent cases, and none can.

CNH argues that the Circuits have adopted different approaches in resolving retiree health care disputes, pointing out that employers have prevailed in some disputes, while retirees have prevailed in others. That lack of unanimity, however, is the result of the variety of contractual provisions and factual

circumstances presented. No two of these cases are alike. The variation in outcomes results from the disparate facts of each case, not from disparate rules of contractual interpretation.

The core rules of interpretation which have been unanimously endorsed by the Circuits to address retiree health care disputes are pure hornbook law: 1) welfare benefits do not automatically vest;[7] 2) parties to a CBA may nevertheless agree to vest retiree health care benefits;[8] 3) extrinsic evidence may be considered if a contract is ambiguous;[9] 4) the burden of proof is on the party asserting the contract claim.[10]

---

[7] *Helwig v. Kelsey Hayes Co.*, 93 F.3d 243, 248 (6th Cir. 1996), *cert. denied*, 519 U.S. 1059 (1997); *Grain Millers v. International Multifoods Corp.*, 116 F.3d 976, 980 (2d Cir. 1997); *Senior v. NSTAR Electric & Gas Corp.*, 449 F.3d 206, 207 (1st Cir. 2006); *UAW v. Skinner Engine Co.*, 188 F.3d 130, 137 (3d Cir. 1999); *Machinists v. Masonite Corp.*, 122 F.3d 228, 231 (5th Cir. 1997); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 604-605 (7th Cir. 1993); *Cherry v. Auburn Gear, Inc.*, 441 F.3d 476, 481 (7th Cir. 2006); *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512, 1517 (8th Cir. 1988), *cert. denied sub nom Anderson v. Slattery Group, Inc.*, 489 U.S. 1051 (1989).

[8] *Yard-Man*, 716 F.2d at 1479; *UAW v. Skinner Engine Co.*, 188 F.3d 130, 138 (3d Cir. 1993); *Machinists v. Masonite Corp.*, 122 F.3d 228, 231 (5th Cir. 1997); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 607 (7th Cir. 1993); *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512; 1516 (8th Cir. 1988).

[9] *UAW v. BVR Liquidating, Inc.*, 190 F.3d 768, 772 (6th Cir. 1999); *UAW v. Skinner Engine Co.*, 188 F.3d 130, 138 (3d Cir. 1993); *Machinists v. Masonite Corp.*, 122 F.3d 228, 233 (5th Cir. 1997); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 608-609 (7th Cir. 1993); *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512, 1517 (8th Cir. 1988).

[10] *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512, 1517 (8th Cir. 1988); *Machinists v. Masonite Corp.*, 122 F.3d 228, 231 (5th Cir. 1997); *Sprague v. General Motors Corp.*, 133 F. 3d 388, 400 (6th Cir. 1998); *In re Unisys Corp. Retiree Medical Ben. ERISA Litigation*, 58 F.3d 896, 902 (3d Cir. 1995), *cert. denied sub nom Pickering v. Unisys Corp.*, 517 U.S. 1103 (1990); *Gable v. Sweetheart Cup Co., Inc.*, 35 F.3d 851, 855 (4th Cir. 1994).

CNH argues that eight Circuits have rendered decisions in conflict with the Sixth Circuit. CNH is wrong. In each cited case, including CNH's two marquee candidates in its effort to show a Circuit conflict, *UAW v. Skinner Engine Co.*, 188 F.3d 130 (3d Cir. 1999) and *Bidlack v Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. 1993), *cert. denied*, 510 U.S. 909 (1993), the outeome would have been the same in the Sixth Circuit.

In *Skinner*, the contract provided that "the company. . . will continue to provide . . . medical coverage." 188 F.3d at 135. The Third Circuit noted that this language changed from contract to contract depending on whether the new contract continued previous coverage, or modified the coverage. If the latter, the contract substituted "will be instituted," for example, for "will continue." Thus, the Third Circuit found that "will continue" referred to whether or not there had been a change in coverage, not to its duration. *Id.* at 143. As the Third Circuit further noted, *Id.* at 144, the contractual health care language on which the plaintiffs relied *did not even mention* retirees:

> the CBA provisions make no material distinction between active employees and retirees in this regard. The only reasonable conclusion—if one begins with the uncontroversial premise that benefits for active employees were not vested—is that benefits for retiree were likewise not vested.

This analysis squares with the Sixth Circuit's decisions and those of every other Circuit. Indeed, the district court below had, in an earlier case, analyzed CBA language similar to that in *Skinner* and concluded that retiree health care benefits did not vest. *Bittinger v. Tecumseh Products Co.*, 83 F. Supp.2d 851 (E.D. Mich. 1998), *aff'd* 201 F.3d 440 (6th Cir. 1999) (unpublished opinion).[11]

---

[11] As in *Skinner*, the CBA in *Bittinger* only referred to "an Insurance Plan for employees covered by this Agreement." As the court noted, plaintiff could not identify "any express language in the CBAs which indicate

All Circuits have required language indicating a specific intent to *confer* health care benefits *on* retirees in order to find vested retiree benefits. Although the Third Circuit also stated in dicta that it disagreed with the *Yard-Man* inference,[12] no substantive conflict exists between *Skinner* and any Sixth Circuit case.

In *Bidlack*, the other decision on which CNH relies, the Seventh Circuit examined a CBA which stated that the company would pay the cost of retirees' health insurance and that the retiree insurance "shall be continued for the spouse after the death of the retiree." 993 F.2d at 606. The Seventh Circuit found this language to be ambiguous on the question of an intent to vest retiree health care rights and remanded for consideration of extrinsic evidence. That is exactly the approach taken by the Sixth Circuit. *See e.g. UAW v. BVR Liquidating, Inc.*, 190 F.3d 768, 774 (6th Cir. 1999), *cert. denied*, 529 U.S. 1067 (2000).

The other cases cited by CNH would also have been decided the same way in the Sixth Circuit. In *Senior v. NSTAR Electric & Gas Corp.*, 449 F.3d 206 (1st Cir. 2006),

---

defendants' intent to provide lifetime benefits to its retirees." 83 F. Supp.2d at 860. The court quoted *Yard-Man* for the proposition that "any benefit that survives the termination of the CBA, 'must find its genesis in the collective bargaining agreement.'" *Id.* at 862. Finding no reference to retiree health care benefits in the CBA, the court granted summary judgment for the defendant. In other words, *relying* on *Yard-Man*, the court came to the *same* conclusion as the Third Circuit in *Skinner*. The Sixth Circuit affirmed. 201 F.3d 440 (6th Cir. 1999).

[12] The Third Circuit's disagreement in *Skinner* appeared to be based on its belief that the Sixth Circuit applied a *presumption* in favor of vesting. 188 F.3d at 140. There is no longer any doubt that the Sixth Circuit *does not* apply a presumption. Since *Skinner* was decided, the Sixth Circuit has clarified on three occasions that no presumption of any kind applies—in the decision below, Pet. 13a, in *Maurer v. Joy Technologies, Inc.*, 212 F.3d 907, 917 (6th Cir. 2000) and in *McCoy v. Meridian Automotive Systems, Inc.*, 390 F.3d 417, 422 (6th Cir. 2004).

the First Circuit echoed *Yard-Man's* description of the traditional rules of contract interpretation to be applied in retiree health care disputes arising out of CBAs. 449 F.3d at 218-219. It rejected the notion that *Yard-Man* created a presumption in favor of vesting: "The court in *Yard-Man* relied, in the main, on 'traditional rules of contract interpretation' to find that the contract was ambiguous." *Id.* at 217 n. 16. The First Circuit found that retiree dental benefits could be modified because the CBA incorporated a non-collectively bargained dental plan that gave the company that right.

In *Joyce v. Curtiss-Wright Corp.*, 992 F. Supp. 259 (W.D.N.Y 1997), *aff'd* 171 F.3d 130 (2d Cir. 1999), the court rejected a claim for vested benefits where summary plan descriptions and summary annual reports had been distributed to retirees clearly stating that their medical benefits "may be modified from time to time or terminated as a result of contractual negotiations," and that termination of the CBA "shall result in termination of the medical coverage provided by such agreement." 992 F. Supp. at 264, 270.

In *Machinists v. Masonite Corp.*, 122 F.3d 228 (5th Cir. 1997), the Fifth Circuit addressed collectively-bargained language that retirees were entitled to certain medical benefits "until the death of the retired employee." This language was in an insurance agreement which stated that "its term is coincident with that of the [CBA's]." The Fifth Circuit found this language ambiguous on the question of intent to vest, and remanded for consideration of extrinsic evidence.122 F.3d at 232-33.

In *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512 (8th Cir. 1987), *cert. denied sub nom Anderson v. Slattery Group, Inc.*, 489 U.S. 1051 (1989), the Eighth Circuit examined CBA language that the company would pay medical benefits "until the death of retiree." Although "viewed in a vacuum," the Eighth Circuit found this language highly probative of an intent to vest, extrinsic evidence demonstrated

that it reflected instead the company's *rejection* of the union's position that surviving spouses also receive health care benefits. 836 F.2d at 1518. Also significant in *Anderson* was the union president's testimony that retiree benefits were not intended to survive the CBA. *Id.* at 1515. The court's analysis simply underscores the fact-dependent nature of these cases.

In *Bazzone v. Automotive Industry Welfare Fund,* 860 F.2d 1088, 1988 WL 58340 (9th Cir. 1988) (unpublished opinion), the court held that a multi-employer trust fund could modify retiree medical benefits because the applicable CBA incorporated a provision that: "Retiree coverage shall be limited to funds available, and the trustees may terminate the Retiree Plan if assets are inadequate to cover liabilities."1988 WL 58340 at *1. The court also rejected the notion that the outcome would be different under Sixth Circuit cases: "they stop short of creating a legal presumption that retiree benefits are vested. . . . They merely establish one more inference of intent, to be considered along with others." *Id.* at *4 .

In *Stewart v. KHD Deutz of America Corp.,* 980 F.2d 698, 702 (11th Cir, 1993), the Eleventh Circuit quoted *Yard-Man's* application of traditional contract interpretation rules with approval and noted that "the Sixth Circuit only used the inference to help it resolve an ambiguity . . . ." *Id.* at 702 n.3. The Eleventh Circuit remanded for consideration of extrinsic evidence after concluding that the contract was ambiguous because of the need to reconcile a provision for retiree health coverage with a clause giving the company the right to "amend, modify, or discontinue the plans." 980 F.2d at 703-704.

Some of these Circuits have balked at the use of the term "inference" in describing the tools used to interpret CBAs.[13] None of them, however, reject consideration of the contextual factors identified by the Sixth Circuit. Every Circuit address-

---

[13] See footnote 12 *infra.*

ing that question has noted the relevance of those factors. For example, in *Machinists v. Masonite*, *supra*, the Fifth Circuit noted that the rationale for the inference—that retirees had no voice in negotiations after retirement—may be considered by the district court "as some evidence of intent" to vest. 122 F.3d at 1231 n.1, *quoting Paperworkers v. Champion International Corp.*, 908 F.2d 1252, 1261 n.12 (5th Cir. 1990). *See also Local 150-A, Food and Commercial Workers v. Dubuque Packing Co.*, 756 F.2d 66, 70 (8th Cir 1985); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 609, 612 (7th Cir. 1993)

b. *No Circuit Disagrees with the Sixth Circuit's Consideration of the Explicit Contractual Link of Health Care and Pension Eligibility*

CNH also attempts to extract a new "split" from the Sixth Circuit's partial reliance below on *Golden*, *supra*, 73 F.3d at 656, where the CBA contained similar retiree health care language. In *Golden*, the court noted, as one factor supporting affirmance of a preliminary injunction, CBA language that retirees were eligible for health care benefits if they were eligible for pension benefits. The explicit link tying eligibility for health care benefits to pension eligibility was not outcome determinative either in *Golden* or below. It was the beginning of the analysis, but did not create a presumption or inference. As the district court stated in *Golden* after reviewing all of the evidence, "all of these facts indicate that plaintiff's retiree health benefits were intended to last for their lifetimes." *Golden,* 845 F. Supp. 410, 415 (E.D. Mich. 1994).

CNH argues that *Cherry v. Auburn Gear*, 441 F.3d 476, 484 (7th Cir 2006), is inconsistent with *Golden*. In *Auburn Gear*, the court held that an agreement that specifically limited retiree benefits to the duration of the contract and stated that changes outside the company's control could result in reductions in retiree benefits, coupled with a past practice of changing benefits for existing retirees every three years,

required a finding that the retiree benefits were not vested. In light of this factual background, the court rejected the retiree's argument that, because the agreement required ten years of service for health care benefits as it did for pension benefits, health care benefits must therefore be vested.[14]

CNH also cites *Puzis v. Masters Mates & Pilots Plans*, 875 F.2d 870, 1989 WL 57657 (9th Cir. 1989), a two-page unpublished opinion. In that case, unlike here, there was no contractual link between eligibility for health care benefits and eligibility for a pension. Instead, plaintiff was a pensioner whose benefits had been provided by a multi-employer trust fund with a specifically limited duration. The court rejected his argument that, because language extending the term of health care plan was identical to that extending the pension trust, his health care benefits were vested. The court found that this language had no bearing on whether his health care benefits were vested, something the plain language of the CBA negated.

Finally, in *Joyce v. Curtiss-Wright Corp. supra*, as noted above, the Second Circuit rejected a vesting argument in a case involving a summary plan description given to retirees which clearly stated that their medical benefits would expire when the CBA terminated.

No Circuit has held that courts should not consider, as one factor, an explicit link of health care benefits to pension benefits.

3. The Sixth Circuit's Preliminary Decision Does Not Conflict With Any Federal Policy

CNH claims that the Sixth Circuit's decision contravenes federal policy and hampers labor negotiations and that retiree

---

[14] The contract at issue in *Auburn Gear*, unlike the provisions here, did not explicitly link retiree health care eligibility to health care eligibility—it merely happened to require the same minimum years of service to be eligible for those separate benefits.

health care obligations burden employers. Putting aside, again, that the decision below is preliminary and was *not* based on the *Yard-Man* inference, CNH's claim lacks substance.

CNH argues that there is a compelling need for a "uniform body of federal law governing the interpretation of CBAs," and cites several Supreme Court decisions holding that in disputes under Section 301, federal law preempts state law. CNH also asserts that the Sixth Circuit's approach contravenes federal labor policy under ERISA and the LMRA. Pet. 18-19. Of course, no Circuit, and especially not the Sixth Circuit, doubts that federal common law governs these cases. And, as shown above, the Sixth Circuit and all other Circuits agree on the applicable, uniform labor law that applies to these case: welfare benefits do not automatically vest under ERISA; the parties may agree by contract to vest welfare benefits, and no automatic presumptions for or against vesting apply.[15]

CNH argues that the portion of the *Yard-Man* case articulating an "inference" as a factor has thwarted the intent of the parties to CBAs.[16] Pet. 20-23. That assertion is based on CNH's claim that some Circuits have adopted result-oriented rules of contract construction that do not reflect the intent of the bargainers. As shown above, that is not the case.

Finally, CNH argues that contractual retiree health care obligations have proved burdensome to employers. Pet. 21-

---

[15] CNH asserts, incorrectly, that the Seventh Circuit applies an automatic presumption against vesting. To the contrary, "Our presumption against vesting kicks in only if all the court has to go on is silence." *Rossetto v. Pabst Brewing Co.*, 217 F.3d 539, 544 (7th Cir. 2000). *See also NSTAR Electric & Gas*, 449 F.3d at 217-18.

[16] CNH also argues that the *Yard-Man* inference encourages forum shopping, offering this case as an example. That is a red-herring. This case was filed in Detroit because plaintiffs, the UAW headquarters, many relevant witnesses and voluminous relevant documents are in Michigan. Until now, CNH never voiced the slightest objection to Plaintiffs' choice of forum.

23. It is equally true that termination of health care coverage in retirement is difficult for retirees. Neither assertion provides a justification for review of the preliminary decisions below. As the Circuit decisions demonstrate, some employers are contractually liable for retiree health care throughout retirement, some are not, depending on the intent of the parties as gleaned from the unique facts of each case.

C. The Interlocutory Decision of the Sixth Circuit Does Not Implicate a Conflict as to CNH's Liability

1. The Cases Cited by CNH Involve Different Legal Standards Applicable in Entirely Distinct Factual Contexts

CNH claimed that, to establish its liability, Plaintiffs must demonstrate that it was either a disguised continuance, committed fraud or tried to evade its labor law obligations.[17] The Sixth Circuit, citing *inter alia*, *N.L.R.B. v. Allcoast Transfer, Inc.*, 780 F.2d 576 (6th Cir. 1986), disagreed. CNH now claims that there is a "square conflict" on this issue among the Circuits.

There is no conflict among the Circuits on the applicable law to be applied in determining CNH's liability under its collective bargaining agreements. Rather, the cases CNH cites reflect the fact that the Circuits have identified distinct categories of alter ego claims, with different criteria depending on the type of claim presented. Three of the cases cited

---

[17] CNH cites *Howard Johnson, Co. v. Detroit Hotel & Restaurant Workers*, 417 U.S. 249 (1974), for this proposition, but the Court noted that alter ego cases often involve a "mere technical change" in the structure of a business "frequently" to avoid the effect of the labor laws. The Court did not require a finding of intent to avoid labor laws and made it clear that, in such circumstances, "the courts have had little difficulty holding that the successor is in reality the same employer and is subject to all the legal and contractual obligations of the predecessor." 417 U.S. at 260 n. 5.

by CNH involve attempts to apply a collective bargaining agreement to the workforce of a corporation that did not sign it—classic labor law "double breasted" and "disguised continuance" cases. Those workforce-related cases implicate traditional labor law concerns and, unsurprisingly, apply a NLRB-derived alter ego standard which includes consideration of anti-union animus or intent to evade contractual obligations as one factor of several. Three of the cases, in contrast, address completely distinct "veil piercing" or similar corporate law alter ego claims. Another of CNH's cases addressed liability under Section 1381 of the Multiemployer Pension Plan Amendment Act of 1980.

CNH attempts to show conflict among the Circuits by noting that different criteria apply in determining liability in these distinct scenarios. The different criteria, however, are based on the type of alter ego claim, not on the Circuit addressing the claim.[18] As the cases demonstrate, a veil piercing claim, for example, involves completely different criteria than a double-breasted claim. None of the cases cited by CNH address the factual scenario presented here—an internal corporate reorganization to facilitate the sale of a subsidiary's stock.[19]

As the Sixth Circuit correctly stated in *N.L.R.B. v. Fullerton Transfer & Storage Limited, Inc.*, 910 F.2d 331, 336 (6th Cir. 1990), the term alter ego "has accumulated a great deal of baggage in the context of labor disputes." All that CNH's citations demonstrate is that courts must of necessity use a flexible approach when reviewing corporate control and suc-

---

[18] As noted below, CNH also misstates the holding of several of the cases, arguing that they require a finding of anti-union animus or improper motive when they in fact do not.

[19] In *N.L.R.B. v. Burns International Security Services, Inc.*, 406 U.S. 272, 291 (1972), the Court identified such a reorganization as one of a "variety of circumstances" where the existing CBA might be binding on the continuing entity.

cession transactions. *Allcoast, supra*, 780 F.2d at 581-82 (collecting cases). Any variance between standards applied arise from the factual context of the particular case, not on any bright line, outcome determinative rules. As stated in *Dewitt Truck Brokers, Inc. v W. Ray Fleming Fruit Co.*, 540 F.2d 681, 684 (4th Cir. 1976), alter ego cases are uniquely fact dependent, making a one-size-fits-all analytical standard impossible:

> Perhaps this is true because the circumstances "necessarily vary according to the circumstances of each case," and every case where the issue is raised is to be considered "*sui generis* [to] . . . be decided on its own underlying facts."

In *Howard Johnson Co. v. Detroit Hotel & Restaurant Workers*, 417 U.S. 249, 256 (1974), the Court cautioned against bright line legal rules in successorship cases, a caution that applies equally to the related alter ego doctrine:

> [W]e must necessarily proceed cautiously, in the traditional case-by-case approach of the common law. Particularly in light of the difficulty of the successorship question, the myriad factual circumstances and legal contexts in which it can arise, and the absence of congressional guidance as to its resolution, emphasis on the facts of each case as it arises is especially appropriate.

2. Cases Applying Corporate Law Alter Ego Standard

CNH cites *N.L.R.B. v Greater Kansas City Roofing, Inc.*, 2 F.3d 1047 (10th Cir. 1993), in arguing that the Circuits are in conflict on the alter ego criteria. That case, however, involved an attempt to hold an individual shareholder liable for a debt of a corporation. This category of alter ego claims is commonly referred to as a "veil piercing" alter ego claim. There is no dispute about the factors to be applied in veil piercing cases, and those factors are distinct from the factors to be applied in traditional workforce-related alter ego cases.

The Tenth Circuit in its decision recited the widely accepted veil piercing criteria, such as commingling of corporate and shareholder funds, failure to maintain adequate corporate records and minutes, the nature of the corporation's ownership and control, undercapitalization, the use of the corporation as a mere instrumentality, disregard of legal formalities, and diversion of corporate assets.[20] 2 F.3d at 1052 n. 6.

Similarly, in *Steelworkers v Connors Steel Co.*, 855 F.2d 1499 (11th Cir 1988), *cert. denied sub nom H.K. Porter Co., Inc. v. Steelworkers*, 489 U.S. 1096 (1989), also cited by CNH, the Eleventh Circuit addressed a claim that a shareholder (a corporate parent) was liable for the collectively bargained health care benefit obligations of its wholly owned subsidiary. The Eleventh Circuit applied corporate law alter ego standards similar to the veil piercing factors employed by the Tenth Circuit in *Greater Kansas City Roofing*, examining the financial relationship between the two entities, undercapitalization, intermingling of assets, and lack of corporate formalities. 855 F.2d at 1505. The court also noted a generalized requirement to be considered in this category of alter ego claims of "fraud or wrong" or "the violation of a statutory or other positive legal duty . . . ." *Id.* at 1505. The court found that this requirement was satisfied by the fact that the parent corporation had caused the termination of benefits owed. The court did not consider (or mention) anti-union animus or intent to evade contract obligations as a factor.

The Eighth Circuit, in *Kansas City Laborers Pension Fund v. Superior General Contractors, Inc.*, 104 F.3d 1050 (8th

---

[20] Moreover, the Tenth Circuit did not hold that anti-union animus or an intent to evade contractual obligations was a required element in veil piercing alter ego claims. Rather, it stated that a general criteria in a veil piercing case was whether the corporate form was being used to "sanction a fraud." In the veil piercing context, however, the court equate that "fraud" with undercapitalization—something quite different than the anti-union animus or intent to evade factor of workforce-related alter ego claims. *See* 2 F.3d 1053 n. 8.

Cir. 1997), addressed an ERISA claim that a non-signatory corporation was liable for fringe benefit contributions owed under a CBA by the signatory corporation. The Tenth Circuit specifically noted that the traditional, NLRB-derived alter ego standard did not apply to this ERISA action, and instead applied "corporate law principles" to determine liability. 104 F.3d at 1055. The corporate law principles included general requirements that the corporate form is used "as a subterfuge to defeat public convenience, to justify wrong, or to perpetuate a fraud." 104 F. 3d at 1055. Thus, the court did not address or consider the labor law factors of anti-union animus or an intent to evade.[21]

The corporate veil piercing theory is not relevant to the facts here. As the district court and the Sixth Circuit recognized, Plaintiffs' theory against CNH is one of direct liability. They claimed that CNH *was* the signatory to the CBA—that the Case Corporation that emerged from the 1994 Reorganization was the *same* corporate entity as the Case Corporation that signed the CBAs under which they retired.

3. Cases Applying the Workforce-Related NLRB-Derived Alter Ego Standard

In three of the cases CNH cites for a split in the Circuits, courts addressed the alter ego doctrine developed by the National Labor Relations Board to determine whether obligations under a CBA are binding on the workforce of a company which did not sign it—an issue not presented here.

In *J. Vallery Electric Inc. v N.L.R.B.*, 337 F.3d 446 (5th Cir. 2003), the court addressed a claim that a non-signatory

---

[21] CNH also cites *Central States Pension Fund v. Central Transport, Inc.*, 85 F.3d 1283 (7th Cir. 1996), in which the Seventh Circuit articulated an alter ego standard in yet another context. The issue was whether a non-signatory corporation could be determined to be an employer within the meaning Section 1381 of the Multiemployer Pension Plan Amendments, 29 U.S.C. § 1381 *et seq.*, and thereby held liable for unpaid benefit obligations of an insolvent contractual obligor.

corporation was an alter ego, that is, a "disguised continuance" of the signatory corporation and that the existing CBA therefore applied to the non-signatory's workforce. The court noted that whether companies are alter egos "is a question of fact answered by two inquiries:" first, whether the two enterprises have substantially identical management, business purposes, operation, equipment, customers, supervision, and ownership; and second, whether there was an "unlawful motive." 337 F.3d at 451. Contrary to CNH's assertion, the court did not hold that unlawful motive was required. In fact, the court held that while anti-union animus was germane to this type of alter ego claim, it is not required. *Id.* at 452 n. 20.

CNH also cites *Crest Tankers, Inc. v. Maritime Union*, 796 F.2d 234 (8th Cir. 1986), in which the court addressed a "disguised continuance" claim that a collectively bargained grievance arbitration procedure applied to the workforce of a non-signatory corporation. Contrary to Petitioner's assertion, the Eighth Circuit did not hold that anti-union animus is a required element of this type of alter ego claim. The court simply held that anti-union sentiment or an intent to avoid a labor contract was an important part of the inquiry. *Id.* at 234

Finally, CNH relies on *Local 343, Plumbers v. Nor-Cal Plumbing, Inc.*, 48 F.3d 1465 (9th Cir. 1994), *cert. denied*, 516 U.S. 912 (1995). In that case, the Ninth Circuit addressed a classic "double breasted" claim—that a CBA covered the workforce of a corporation that had never signed because the non-signatory corporation was the alter ego of a related corporation, operating at the same time, that *had* signed the CBA. The Ninth Circuit applied an alter ego standard derived from NLRB decisions to this workforce-related claim, requiring a showing of common ownership of the two corporations, common management, inter-relation of operations, centralized control of labor relations, and "anti-union animus." 48 F.3d at 1471, 1472. The Ninth Circuit

also noted the difference between this workforce-related alter ego standard and the veil piercing alter ego standard:

> The alter ego doctrine as developed in labor law is analytically different from the traditional veil-piercing doctrine as developed in corporate law. *The alter ego doctrine is designed to prevent employers from escaping their collective bargaining obligations by shifting work to non-union firms they also own.* This doctrine has nothing to do with the doctrine that allows creditors of corporations to pierce the corporate shell to hold shareholders liable for corporate debts if they abuse the corporate form to defraud creditors.

48 F.3d at 1475 (emphasis added).

Here, the basis for CNH's liability was not that it tried to shift work to a non-union firm. CNH was found liable because, as the Sixth Circuit and district court decisions make clear, CNH (as it is now known) is the same continuing corporate entity as JI Case (as it was called before 1990). The veil piercing, disguised continuance and double breasted cases cited by CNH do not govern CNH's liability for obligations arisng under the CBAs it signed.

CONCLUSION

For the reasons stated, CNH's petition for writ of certiorari must be denied.

Respectfully submitted,

ROGER J. MCCLOW *
KLIMIST, MCKNIGHT, SALE,
MCCLOW & CANZANO, P.C.
400 Galleria Officentre, Suite 117
Southfield, MI 48034
(248) 354-9650

Counsel for Respondents Yolton, Montgomery, Teas, Betker, Maynard and Halsted

* Counsel of Record

REPLY BRIEF

(3)

FILED
OCT 16 2006
OFFICE OF THE CLERK

No. 06-176

IN THE

Supreme Court of the United States

CNH AMERICA LLC,

Petitioner,

v.

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, GARY HALSTED, AND EL PASO TENNESSEE PIPELINE COMPANY,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR THE PETITIONER

MICHAEL P. GOING
ALLAN R. CRIDER
CNH AMERICA LLC
100 S. Saunders Rd.
Lake Forest, IL 60045
(847) 955-3900

NORMAN C. ANKERS
HONIGMAN MILLER
SCHWARTZ & COHN LLP
2290 First National Bldg.
660 Woodward Ave.
Detroit, MI 48226
(313) 465-7000

BOBBY R. BURCHFIELD
Counsel of Record
JASON A. LEVINE
DOUGLAS G. EDELSCHICK
JOSHUA D. ROGACZEWSKI
ERIK C. BAPTIST
MCDERMOTT WILL & EMERY LLP
600 13th Street, N.W.
Washington, DC 20005
(202) 756-8000

Counsel for Petitioner

OCTOBER 16, 2006

RULE 29.6 STATEMENT

The Rule 29.6 statement in CNH America LLC's petition (Pet. ii) remains accurate.

TABLE OF CONTENTS

RULE 29.6 STATEMENT i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

I. THE SIXTH CIRCUIT'S APPROACH TO THE "VESTING" ISSUE IS IN THE DISTINCT MINORITY AMONG THE CIRCUITS 1

II. THE SIXTH CIRCUIT'S OPINION EXPOSES A CIRCUIT SPLIT REGARDING THE FACTORS EMPLOYED IN AN "ALTER EGO" ANALYSIS. 6

III. THE ISSUES RAISED BY THE PETITION MERIT THE COURT'S IMMEDIATE ATTENTION. 9

CONCLUSION 10

TABLE OF AUTHORITIES

Cases

Anderson v. Alpha Portland Industries, Inc., 836 F.2d 1512 (8th Cir. 1988), *cert. denied*, 489 U.S. 1051 (1989) 2, 3

Bidlack v. Wheelabrator Corp., 993 F.2d 603 (7th Cir.), *cert. denied*, 510 U.S. 909 (1993) 3

Bittinger v. Tecumseh Products Co., 83 F. Supp. 2d 851 (E.D. Mich. 1998), *aff'd*, 201 F.3d 440 (6th Cir. 1999) 6

Cherry v. Auburn Gear, Inc., 441 F.3d 476 (7th Cir. 2006) 4

Fox v. Massey-Ferguson, Inc., 172 F.R.D. 653 (E.D. Mich. 1995), *aff'd*, 91 F.3d 143 (6th Cir. 1996) 1

Gilbert v. Doehler-Jarvis, Inc., 87 F. Supp. 2d 788 (N.D. Ohio 2000) 6

Golden v. Kelsey-Hayes Co., 845 F. Supp. 410 (E.D. Mich. 1994), *aff'd*, 73 F.3d 648 (6th Cir.), *cert. denied*, 519 U.S. 807 (1996) 4

Golden v. Kelsey-Hayes Co. (In re Golden), 73 F.3d 648 (6th Cir.), *cert. denied*, 519 U.S. 807 (1996) 4

Hinckley v. Kelsey-Hayes Co., 866 F. Supp. 1034 (E.D. Mich. 1994) 6

International Union, UAW v. BVR Liquidating, Inc., 190 F.3d 768 (6th Cir. 1999), *cert. denied*, 529 U.S. 1067 (2000) 4

International Union, UAW v. Loral Corp., 1997 WL 49077 (6th Cir. Feb. 3, 1997) 5

International Union, UAW v. Skinner Engine Co., 188 F.3d 130 (3d Cir. 1999) 2, 3, 5

International Union, UAW v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984) 2, 3, 5

Joyce v. Curtiss-Wright Corp., 171 F.3d 130 (2d Cir. 1999) 3, 4

Linville v. Teamsters Workers Union, Local 284, 206 F.3d 648 (6th Cir. 2000) 6

Maurer v. Joy Technologies, Inc., 212 F.3d 907 (6th Cir. 2000) 6

NLRB v. Allcoast Transfer, Inc., 780 F.2d 576 (6th Cir. 1986) 7, 8

NLRB v. Fullerton Transfer & Storage Ltd., 910 F.2d 331 (6th Cir. 1990) 8

Policy v. Powell Pressed Steel Co., 770 F.2d 609 (6th Cir. 1985) , *cert. denied*, 475 U.S. 1017 (1986) 5

Puzis v. Masters Mates & Pilots Plans, 1989 WL 57657 (9th Cir. May 22, 1989) 4

Rossetto v. Pabst Brewing Co., 217 F.3d 539 (7th Cir. 2000), *cert. denied*, 531 U.S. 1192 (2001) 1

Sengpiel v. B.F. Goodrich Co., 156 F.3d 660 (6th Cir. 1998), *cert. denied*, 526 U.S. 1016 (1999) 4

Stardyne, Inc. v. NLRB, 41 F.3d 141 (3d Cir. 1994) 7

UAW Local 540 v. Baretz, 159 F. Supp. 2d 968 (E.D. Mich. 2001) 6

United Paperworkers Internatonal Union v. Champion International Corp., 908 F.2d 1252 (5th Cir. 1990) 2

Wilson v. International Brotherhood of Teamsters, 83 F.3d 747 (6th Cir.), *cert. denied*, 519 U.S. 1041 (1996) 7, 8

Other Authorities

Gregory Parker Rogers, Comment, *Rethinking* Yard-Man*: A Return to Fundamental Contract Principles in Retiree Benefits Litigation*, 37 Emory L.J. 1033 (1988) 1

Douglas Sondgeroth, Note, *High Hopes: Why Courts Should Fulfill Expectations of Lifetime Retiree Health Benefits in Ambiguous Collective Bargaining Agreements*, 42 B.C. L. Rev. 1215 (2001) 1

Robert L. Stern et al., *Supreme Court Practice* (8th ed. 2002) 10

Respondents' efforts to reconcile divergent approaches to the "vesting" of collectively-bargained retiree health care benefits and the allocation of liability to fund such benefits in a corporate reorganization are unavailing. The plain split among the Circuits on these issues presents this Court an opportunity to address matters of great importance to the national economy. The time has come, we respectfully submit, for the Court to resolve these issues.

I. THE SIXTH CIRCUIT'S APPROACH TO THE "VESTING" ISSUE IS IN THE DISTINCT MINORITY AMONG THE CIRCUITS.

The first question presented by the petition is whether the court below applied the proper legal standard to determine whether retiree health care benefits are vested. This issue has vexed commentators and produced decisions described by Judge Posner as "all over the lot," *Rossetto v. Pabst Brewing Co.*, 217 F.3d 539, 543 (7th Cir. 2000), *cert. denied*, 531 U.S. 1192 (2001), yet respondents claim to find only the consistent application of "traditional" contract principles. Pet. Opp'n 13. Their admirable advocacy, however, fails to acknowledge the markedly different approaches taken by the Circuits in an area of the law that demands uniformity. Pet. 18-19.[1]

---

[1] The differences in approach between the Sixth Circuit and its sister Circuits are widely acknowledged. One district court noted that "*Yard-Man* sets the Sixth Circuit apart from other Circuits in that it recognizes an inference of interminable benefits where there is no language to the contrary." *Fox v. Massey-Ferguson, Inc.*, 172 F.R.D. 653, 675 (E.D. Mich. 1995), *aff'd*, 91 F.3d 143 (6th Cir. 1996). Commentators have also discerned the differences among the Circuits. *See, e.g.*, Douglas Sondgeroth, Note, *High Hopes: Why Courts Should Fulfill Expectations of Lifetime Retiree Health Benefits in Ambiguous Collective Bargaining Agreements*, 42 B.C. L. Rev. 1215, 1238 (2001) (acknowledging that the Third, Seventh, and Eighth Circuits "have rejected the rationale of *Yard-Man* and its progeny and have concluded that it is inappropriate for

The Sixth Circuit's judgment favoring respondents follows the analytical framework developed in *International Union, UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984), and its progeny. This framework has drawn substantial judicial criticism. The Third Circuit rejects the framework as "contrary to Congress' intent in choosing specifically not to provide for vesting of employee welfare benefits." *Int'l Union, UAW v. Skinner Engine Co.*, 188 F.3d 130, 141 (3d Cir. 1999). The Fifth Circuit finds "no basis in logic or federal labor policy" for the Sixth Circuit's approach. *United Paperworkers Int'l Union v. Champion Int'l Corp.*, 908 F.2d 1252, 1261 n.12 (5th Cir. 1990). The Eighth Circuit rejects the approach and requires "plaintiffs to prove their case without the aid of gratuitous inferences." *Anderson v. Alpha Portland Indus., Inc.*, 836 F.2d 1512, 1517 (8th Cir. 1988), *cert. denied*, 489 U.S. 1051 (1989). Such strident criticism from the Sixth Circuit's sister Circuits would not exist if, as respondents contend, the Sixth Circuit framework did no more than apply traditional contract principles.[2]

Predictably, respondents claim that *Yard-Man*'s unique framework had no effect on the Sixth Circuit's judgment. Pet. Opp'n 12-13. As CNH America demonstrated in its petition, however, the Sixth Circuit's *Yard-Man* approach led directly to the result below. Pet. 16-17. The *only* contractual

---

courts to aid plaintiffs by considering employee expectations in benefits termination litigation"); Gregory Parker Rogers, Comment, *Rethinking* Yard-Man*: A Return to Fundamental Contract Principles in Retiree Benefits Litigation*, 37 Emory L.J. 1033, 1034-38 (1988) (observing that "the circuits are in substantial disagreement as to how to analyze retiree benefits cases" and "[n]o two courts seem to take the same approach").

[2] Nor can respondents dispute the First, Second, Seventh, Ninth, and Eleventh Circuits' rejections of the *Yard-Man* framework. Pet. 13-15.

promise to provide respondents anything is the statement in the group insurance plan that "the Company shall pay the full premium cost of the above coverages." Pet. App. 4a. This provision is silent regarding the *duration* of the company's obligation.[3] Under *Yard-Man*, this silence is an ambiguity inviting consideration of other parts of the contract, extrinsic evidence, and the *Yard-Man* inference. 716 F.2d at 1479-80. In the Second, Third, and Seventh Circuits, however, the absence of a provision explicitly granting lifetime benefits would have been fatal to respondents' claims.[4]

The provision used by the Sixth Circuit to fill the "silence" reflects the strong role *Yard-Man* played in the decision below and, more importantly, confirms that this is an appropriate case to resolve the conflict among the

---

[3] The only express durational language appears in the CBA and states that the insurance agreement—which provides retiree health care benefits—runs "concurrently with" and, by implication, expires with the CBA. Pet. App. 4a. The *Yard-Man* framework led the Sixth Circuit to disregard this durational language. Pet. App. 15a (citing *Yard-Man*, 716 F.2d at 1482). At least one of the non-*Yard-Man* Circuits would not have ignored this general durational language. *See, e.g.*, *Anderson*, 836 F.2d at 1519 (explaining that general durational clauses show intent to limit retiree benefits to duration of agreement and observing that the Sixth Circuit approach renders such clauses nugatory).

[4] *See Joyce v. Curtiss-Wright Corp.*, 171 F.3d 130, 134 (2d Cir. 1999) (requiring "specific written language that is reasonably susceptible to interpretation as a promise . . . to vest the retirees' health benefits" and refusing to infer promise of vested benefits from silence); *Skinner*, 188 F.3d at 142-45 (holding that "will continue" and "shall remain" without durational limitations unambiguously supports employer's interpretation); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 608 (7th Cir.) (en banc) (holding that silence on the duration of the company's promise to pay for benefits results in a presumption against vesting because it is neither a "yawning void . . . that cries out for an implied term" nor a contractual ambiguity), *cert. denied*, 510 U.S. 909 (1993).

Circuits. The insurance agreements make retirement under the company pension plan a prerequisite for retiree health care benefit eligibility. Pet. App. 47a. Although it contains *no* durational language, the Sixth Circuit considered this provision an expression of intent about the duration of respondents' benefits. Pet. App. 14a. The Sixth Circuit supported its finding with *Golden v. Kelsey-Hayes Co. (In re Golden)*, in which it affirmed a district court's conclusion that connecting health care benefits to pension benefits in any way expresses the parties' intent to vest the health care benefits. 73 F.3d 648, 656 (6th Cir.), *cert. denied*, 519 U.S. 807 (1996).[5] The *Golden* district court buttressed its inference of vesting by invoking "an inference of interminable benefits absent express language to the contrary," which it believed was "[t]he most important holding of the *Yard-Man* decision." 845 F. Supp. 410, 413 (E.D. Mich. 1994).[6] Application of this inference shows that *Golden* is a direct lineal descendant of *Yard-Man*, and at least three non-*Yard-Man* Circuits reject that determinative inference.[7]

---

[5] In the decision below, the Sixth Circuit cited *Golden* five times. Pet. App. 14a, 16a nn.6-7, 17a n.8, 20a. The Sixth Circuit's repeated citation of *Yard-Man* (*see* Pet. 9-10) and its heavy reliance on *Golden*—which relied heavily on the *Yard-Man* inference—make clear that the result below is plainly based on *Yard-Man* and its progeny.

[6] The indispensability of the *Yard-Man* inference to the *Golden* court's holding—and, by extension, the Sixth Circuit's holding below—is also shown by the Sixth Circuit's failure to follow *Golden* in pure ERISA cases, when *Yard-Man* also does not apply. *Sengpiel v. B.F. Goodrich Co.*, 156 F.3d 660, 667-68 (6th Cir. 1998), *cert. denied*, 526 U.S. 1016 (1999); *see also Int'l Union, UAW v. BVR Liquidating, Inc.*, 190 F.3d 768, 773 (6th Cir. 1999) (*Yard-Man* inapplicable in pure ERISA cases), *cert. denied*, 529 U.S. 1067 (2000).

[7] *Joyce*, 171 F.3d at 134 (rejecting retirees' contention that agreement language providing insurance to "employees receiving or becoming entitled to receive pension payments" could "reasonably be

The Sixth Circuit further supported its judgment with an expansive reliance on other parts of the contracts (Pet. App. 16a-17a) and extrinsic evidence (*id.* at 19a-21a), which respondents also interject into their brief (Pet. Opp'n 2-3, 11-12). As discussed in CNH America's petition, the Sixth Circuit's use of this information shows it believed the contracts were ambiguous. Pet. 12, 16 (citing *Yard-Man*, 716 F.2d at 1479-80). In any event, respondents would not have been able to rely on this evidence in at least the Second, Third, and Seventh Circuits, because at least those three Circuits would find no ambiguity in this case. *See supra* note 4.

Finally, respondents understate the impact of *Yard-Man* on the Sixth Circuit's jurisprudence. Pet. Opp'n 13-14. The Sixth Circuit has reversed opinions of district courts that "failed to give effect to [its] admonition that 'retiree benefits are in a sense "status" benefits which, as such, carry with them an inference that they continue so long as the prerequisite status is maintained.' " *E.g.*, *Policy v. Powell Pressed Steel Co.*, 770 F.2d 609, 616 (6th Cir. 1985) (quoting *Yard-Man*, 716 F.2d at 1482), *cert. denied*, 475 U.S. 1017 (1986). As a practical matter, the *Yard-Man* framework operates as a presumption against employers: "[T]he *Yard-Man* inference is strong evidence of the parties' intent and *should carry the day if corroborated by other proof and not convincingly contradicted.*" *Int'l Union, UAW v. Loral Corp.*, 1997 WL 49077, at *2 (6th Cir. Feb. 3, 1997)

---

read as binding [the employer] to vest the benefits at issue"); *Cherry v. Auburn Gear, Inc.*, 441 F.3d 476, 484 (7th Cir. 2006) (rebuffing retirees' attempt to sustain express language requirement with the packaging of a welfare benefit with pension benefits); *Puzis v. Masters Mates & Pilots Plans*, 1989 WL 57657, at *2 (9th Cir. May 22, 1989) (fact that "health care benefits were tied to [retiree's] status as a pensioner" does not help court "in determining whether the health care benefits were vested").

(emphasis added).[8] It is no coincidence, therefore, that employers prevail in the Sixth Circuit only under narrowly-defined circumstances—when the contract explicitly and unambiguously limits the duration of benefits, *see, e.g.*, *Bittinger v. Tecumseh Prods. Co.*, 83 F. Supp. 2d 851, 855, 858-62 (E.D. Mich. 1998) (not applying *Yard-Man* inference when contract expressly limited company's promise to "the term of the new Contract"), *aff'd*, 201 F.3d 440 (6th Cir. 1999),[9] or when plaintiffs' claims are estopped, *Maurer v. Joy Techs., Inc.*, 212 F.3d 907, 919 (6th Cir. 2000). Other Circuits have a more balanced record.[10]

II. THE SIXTH CIRCUIT'S OPINION EXPOSES A CIRCUIT SPLIT REGARDING THE FACTORS EMPLOYED IN AN "ALTER EGO" ANALYSIS.

The second question presented here is whether CNH America can be held liable pursuant to the alter ego doctrine for retiree health care obligations agreed to by Case, even though the Reorganization Agreement creating Case's

---

[8] *See also, e.g.*, *UAW Local 540 v. Baretz*, 159 F. Supp. 2d 968, 975 (E.D. Mich. 2001) ("Where an employer does not reserve the right to modify or terminate benefits, retirees who have vested lifetime benefits can anticipate that those benefits will continue unchanged as long as they remain retirees."); *Gilbert v. Doehler-Jarvis, Inc.*, 87 F. Supp. 2d 788, 793, 795 (N.D. Ohio 2000) ("*Yard-Man*'s *presumption* that retiree insurance benefits survive the termination of the CBA remains the law of this Circuit." (emphasis added)); *Hinckley v. Kelsey-Hayes Co.*, 866 F. Supp. 1034, 1043 (E.D. Mich. 1994) ("If these provisions do not expressly provide for vested benefits, then the court can apply the status inference supplied by *Yard-Man* in order to resolve the ambiguity present in the agreements.").

[9] *See also Linville v. Teamsters Workers Union, Local 284*, 206 F.3d 648, 651 (6th Cir. 2000) (*Yard-Man* inference cannot contradict express durational limitation).

[10] *See* Pet. Writ Certiorari 15 n.5, *El Paso Tenn. Pipeline Co. v. Yolton*, No. 06-201 (U.S. filed Aug. 9. 2006).

successor (now CNH America) fully and fairly allocated the liabilities at issue to Tenneco (now El Paso). Respondents' assertion that there is no conflict among the Circuits regarding the need for a finding of unlawful intent or anti-union animus to invoke the alter ego doctrine contradicts the primary decision on which the Sixth Circuit relied in the decision below. In *NLRB v. Allcoast Transfer, Inc.*, 780 F.2d 576 (6th Cir. 1986), the Sixth Circuit observed that this Court has not addressed the issue of intent or animus, and "[t]he circuits which have considered this issue have disagreed as to its appropriate resolution." *Id.* at 579-81. The Third Circuit also recognized that this "issue has yielded no consensus among the courts of appeals that have considered it." *Stardyne, Inc. v. NLRB*, 41 F.3d 141, 146 & n.4 (3d Cir. 1994) (Alito, J.) (noting that "the circuits have taken three different approaches" when determining whether an alter ego analysis must include a finding of an intent to avoid labor obligations).[11]

Respondents now attempt to dissect the body of alter ego decisions into fact-specific layers, with the inevitable result that none address "the factual scenario presented here—an internal corporate reorganization to facilitate the sale of a subsidiary's stock." Pet. Opp'n 24-27. Ironically, neither of the two alter ego decisions relied on by the Sixth Circuit in this case presented such a corporate reorganization. *See Allcoast Transfer*, 780 F.2d 576; *Wilson v. Int'l Brotherhood of Teamsters*, 83 F.3d 747 (6th Cir.), *cert. denied*, 519 U.S. 1041 (1996). If respondents' position before this Court were correct, then the Sixth Circuit relied on the wrong precedents to decide this case.

---

[11] CNH America perceives the same three categories as the Third Circuit. Pet. 24-28.

Indeed, the Sixth Circuit and district court relied on precisely the sorts of cases respondents now claim are irrelevant to decide CNH America's liability. Pet. App. 24a-31a, 81a-82a. In *Allcoast Transfer*, for instance, the NLRB found two successor employers to be the "disguised continuances" of their predecessor, and therefore bound by the predecessor's CBAs, even though the successors were non-signatories to the CBA. *Id.* at 579-83. On appeal, the Sixth Circuit addressed "which criteria should be used to determine whether a successor corporation is merely the alter ego of its predecessor," and held that employer intent to evade labor law obligations is *not* essential for imposition of alter ego status. *Id.* at 579, 581. Contrary to respondents' assertion, courts such as the Sixth Circuit find "disguised continuance" cases applicable to the facts here.

Similarly, the court below relied on *Wilson* (Pet. App. 28a), which involved a "double-breasted operation" with only one employer as a signatory to a CBA. 83 F.3d at 751-52. Looking to principles of corporate law, the court found that the non-signatory employer could be liable as an alter ego and therefore responsible for obligations under the CBA. *Id.* at 758-59. The Sixth Circuit's reliance on *Wilson* further demonstrates that respondents' attempt to distinguish away "double-breasted" alter ego cases lacks merit.[12]

Respondents also allege that CNH America is directly liable for their health care benefits. Pet. Opp'n 27. CNH America was never a party to the CBAs that the old Case Corporation negotiated. Pet. App. 5a-7a. Only the Sixth

---

[12] The same is true for *NLRB v. Fullerton Transfer & Storage Ltd.*, 910 F.2d 331 (6th Cir. 1990), which the *Yolton* court cited to find that CNH America is the alter ego of J.I. Case. Pet. App. 25a-26a. In *Fullerton Transfer*, the court stated that the same alter ego standard would apply to "double-breasted operations" and "disguised continuances." 910 F.2d at 336.

Circuit's improper application of the alter ego doctrine could hold the non-signatory company responsible for respondents' health care costs. In fact, respondents concede that El Paso (formerly Tenneco) "assumed Case's postretirement health and life insurance obligations ... for pre-reorganization retirees" in the Reorganization Agreement. Pet. Opp'n 4. El Paso also retained its ownership of Case stock, certain demand notes, and certain Retained Assets, while providing CNH America (then Case Equipment Corporation) with most of the business assets of Case. *Id.* Accordingly, all obligations to respondents were fully and fairly allocated in the reorganization, and respondents cannot show an intent to evade labor obligations or anti-union animus.

As discussed in CNH America's petition, the conflict among the Circuits can be divided into three categories. Pet. 24-28. Even the Sixth Circuit has recognized the split in authority, which this Court can resolve to create certainty and uniformity.

III. THE ISSUES RAISED BY THE PETITION MERIT THE COURT'S IMMEDIATE ATTENTION.

Respondents effectively concede the importance of the questions presented by CNH America's petition, and do not dispute the magnitude of the legacy costs facing American industry from the "vesting" of retiree health care benefits. Pet. 18-23, 28-30. Rather, respondents claim—against all logic—that the case law is uniform among the Circuits and that the Sixth Circuit's approach is consistent with ERISA and with the intent of the parties. Pet. Opp'n 22-23. The lack of uniformity and the ease of laying venue under ERISA and the LMRA subject companies with operations in other Circuits to the unique and hostile law of the Sixth Circuit. Pet. 23.

Further, respondents repeatedly describe the decision below as "interlocutory" and claim that resolution of this dispute will require detailed factual examination. To the

contrary, resolution of the circuit splits on of these issues now would promote judicial economy by allowing discovery and trial to proceed under proper legal standards. Accordingly, now is the appropriate time for this Court to address the pressing issues presented in the petition. *See* Robert L. Stern et al., *Supreme Court Practice* § 4.18, at 259 (8th ed. 2002) (noting that the Court grants certiorari from preliminary injunctions if the issue is "important and clear-cut" and "fundamental to the to the further conduct of the case"). Simply put, these issues have percolated in the lower courts long enough; it is time for final resolution.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MICHAEL P. GOING
ALLAN R. CRIDER
CNH AMERICA LLC
100 S. Saunders Rd.
Lake Forest, IL 60045
(847) 955-3900

NORMAN C. ANKERS
HONIGMAN MILLER
SCHWARTZ & COHN LLP
2290 First National Bldg.
660 Woodward Ave.
Detroit, MI 48226
(313) 465-7000

BOBBY R. BURCHFIELD
Counsel of Record
JASON A. LEVINE
DOUGLAS G. EDELSCHICK
JOSHUA D. ROGACZEWSKI
ERIK C. BAPTIST
MCDERMOTT WILL & EMERY LLP
600 13th Street, N.W.
Washington, DC 20005
(202) 756-8000

Counsel for Petitioner

OCTOBER 16, 2006